



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/509,594

09/29/2004

Toshimitsu Baba

2004-1499A

5906

513

7590

02/26/2008

WENDEROTH, LIND & PONACK, L.L.P.

2033 K STREET N. W.

SUITE 800

WASHINGTON, DC 20006-1021

EXAMINER

DEES, NIKKI H

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/509,594	Applicant(s) BABA ET AL.	
	Examiner Nikki H. Dees	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 2,3 and 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>30 November 2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Amendment filed November 30, 2007, has been entered. Claims 1 and 4 remain pending in the application. The previous objections to the specification have been withdrawn in light of Applicant's amendments.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emoto (CA 2,318,566) in view of Saitoh et al. (EP 1,174,516).

3. Emoto (Abstract) teaches a gelatinous food product having a protein content ranging from 2-60% and a pH in the range of 3.3 to 4. Emoto goes on further to state examples of proteins for the invention including soybean protein (p. 11 line 7). These disclosures read on Applicants' claim of a jelly food having less than 10% soybean protein in a weakly acidic region. However, Emoto is silent as to the phytic acid content of the soy protein, as well as the particular fraction of soy-protein utilized.

4. Saitoh et al. have disclosed a method for separating soybean protein 7S fraction from soybean protein 11S fraction. The proteins are treated with phytase to lower the phytic acid content of the final product to less than 0.2%. They report the final phytic

acid content of the protein solutions as 0.05% [0041]. A low level of phytic acid is desired to minimize chelation of micronutrients [0007].

5. Motivation to combine the 7S soybean protein product taught by Saitoh et al. in a jelly food such as the one taught by Emoto is provided by Bringe (6,566,134).

6. Bringe speaks to the texturizing properties and physiological improvements of soy protein ingredients containing high levels of beta-conglycinin (7S) relative to glycinin (11S) protein (Abstract). In particular, he notes that compositions containing greater levels of beta-conglycinin have preferable gelling properties in a weakly acidic region.

7. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the low-phytic acid 7S soybean protein claimed by Saitoh et al. could be used in a jelly food such as the one claimed by Emoto in order to provide a final product with desirable textural and nutritional properties.

Response to Arguments

8. Applicant's arguments filed November 30, 2007, have been fully considered but they are not persuasive. Applicants argue that Bringe does not provide motivation for combining the gelatinous food product of Emoto with Saitoh et al.

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Emoto teach a gelled food product having a pH in the range of 3.3 to 4 (Abstract). Saitoh et al. teach the 7S soybean protein having a low level of phytic acid [0041]. Bringe speaks to the texturizing properties and physiological improvements of soy protein ingredients containing high levels of beta-conglycinin (7S) relative to glycinin (11S) protein (Abstract). The artisan would have found the health benefits of increased 7S protein as taught by Bringe (cols. 2-3) as motivation to include the high-7S protein in the product of Emoto.

10. One of ordinary skill in the art would have thought it obvious to try the 7S soybean protein as taught by Saitoh et al. in the product of Emoto in order to improve the texture and gelling properties of the product of Emoto. This substitution would have been well within the technical grasp of one of ordinary skill in the art, and would not have required undue experimentation. Further, the artisan would have had a reasonable expectation that the final product would maintain favorable gelling and textural properties.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the protein having high solubility in an acidic region and a smooth mouthfeel, as well as the use by Emoto of a gelling agent) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nikki H. Dees
Examiner
Art Unit 1794

/Carol Chaney/

Supervisory Patent Examiner, Art Unit 1794